



**Sengeza v Tarus Joseph t/a Tarus & Co Advocates (Miscellaneous Application E141 of 2023) [2023] KEHC 27247 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27247 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E141 OF 2023  
DKN MAGARE, J  
DECEMBER 20, 2023**

**BETWEEN**

**MTENDE TEMBE SENGEZA ..... APPLICANT**

**AND**

**TARUS JOSEPH T/A TARUS & CO ADVOCATES ..... RESPONDENT**

**JUDGMENT**

1. This matter is a sad one. The Defendant is an Advocate of this Court. He has now closed his offices and left clients stranded. The Plaintiff sought the following Orders:
  - a) That Joseph Tarus t/a Tarus & Co. Advocates do forthwith render an Account of the Judgement sum obtained in Mariakani SRMCC No. 167 of 2016 Mtende Tembe Sengeza v Unigroup Transporters Limited.
  - b) That Joseph Tarus t/a Tarus & Co. Advocates do forthwith honour and remit the sum of Kshs. 316,400.00/= paid to them on behalf of the Applicant being the decretal sum in Mariakani SRMCC No. 167 of 2016 Mtende Tembe Sengeza v Unigroup Transporters Limited
  - c) That Joseph Tarus t/a Tarus & Co. Advocates do forthwith honour and remit the decretal interest which was awarded from 11<sup>th</sup> May 2021 in Mariakani SRMCC No. 167 of 2016 Mtende Tembe Sengeza v Unigroup Transporters Limited
  - d) That Joseph Tarus t/a Tarus & Co. Advocates do pay the costs and interest of this action.
2. The Plaintiff adopted and relied on 16<sup>th</sup> May 2023 in evidence. She stated that the Defendant consented to 70:30 liability without her consent. Unfortunately, I cannot review the judgment already delivered. Further, the Defendant had ostensible authority to record the consent. Without it being set aside, the Plaintiff must live with the award of Ksh. 316,400/-.



3. The Plaintiff attached 2 cheques showing payments of decretal sum. She also sought interest on the decretal sum. The Plaintiff has not however shown she paid legal fees. The Defendant did not defend the claim.
- a) I find that the Plaintiff is entitled to the payment of a sum of Ksh. 316,400.00/= together with interest from 1/8/2021 at court rates till payment in full. Interest is based on the fact that payment was made via a cheque dated 8/7/2021. Therefore, due allowance is given for dispatches of cheques and cheques clearing. The matter not having been defended, each party will bear own costs.

#### **Determination**

4. In the upshot, I make the following orders:
- i) The Respondent is directed to forthwith honour and remit the sum of Kshs. 316,400.00/= paid to them on behalf of the Applicant being the decretal sum in Mariakani SRMCC No. 167 of 2016 Mtende Tembe Sengeza v Unigroup Transporters Limited.
- ii) The above amount shall attract interest at court rates from 1/8/2021 till payment in full.
- iii) There is no order as to costs.

**DELIVERED, DATED AND SIGNED AT MOMBASA, VIRTUALLY ON THIS 20<sup>TH</sup> DAY OF DECEMBER, 2023.**

**JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Miss Musyoki for the Plaintiff

No appearance for the Respondent

